



Appeal Decision

Site visit made on 17 October 2019

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/W5780/W/19/3220321 73-77 Ilford Hill, Ilford, IG1 2DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Westplan Investments Limited against the Council of the London Borough of Redbridge.
 - The application Ref 2510/18, is dated 19 June 2018.
 - The development proposed is the formation of 3 additional floors to provide 12 no. residential units and works at basement level to facilitate a waste & recycling area, cycle storage, new lift and ancillary plant, together with new external cladding, replacement fenestration and a new glazed canopy to the existing building.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Westplan Investments Limited against the Council of the London Borough of Redbridge. This application is the subject of a separate Decision.

Procedural matters

3. The description on the application form differs from that on the appeal form. For the avoidance of doubt, I have considered the scheme on the basis of the above description and am satisfied that dealing with the appeal on this basis has not prejudiced the interests of any party.
4. The application was made in outline with all matters reserved for future consideration. I have determined the appeal on this basis, treating the submitted layout and drawings as illustrative.
5. The appellant says that a previous Planning Permission¹ at the appeal site has been lawfully implemented, but the Council disputes this ('the previous Planning Permission'). However, the lawful use of the site and whether this Planning Permission is extant is not a matter for me to determine in a section 78 appeal of the Town and Country Planning Act 1990 ('the Act'). It is open for the appellant to apply to have the matter determined under sections 191 or

¹ Council Ref 1997/01 for the conversion of the existing upper floors into 8 self-contained flats and the formation of new third and fourth floors to form a further 8 self-contained flats. Planning Permission granted on 11 December 2001.

192 of the Act or for the Council to take enforcement action if it considers the current use of the land or development operations to be unlawful. Any such application or enforcement action would be unaffected by my determination of this appeal. My consideration of the scheme has therefore been based on the development description above.

6. My determination of this appeal is against the adopted Local Plan² and London Plan³. However, the appellant's statement of case also make reference to a number of policies from the emerging London Plan. Although this has been subject to examination and is at an advanced stage, the Mayor has not accepted all of the subsequent recommendations made by the panel of Inspectors. Given the uncertainties as to how this may affect the outcome of the process, I have assigned this plan limited weight.

Background

7. The appellant has clarified that the proposed 3-storey extension comprising 12 flats would result in an 8½-storey building above basement level, with a total of 28 flats and the following uses to each floor: -
 - Basement level would contain a waste & recycling area, cycle storage, new lift and ancillary plant, and the retention of the existing car parking spaces for the commercial use(s) at ground and mezzanine levels;
 - Ground and mezzanine levels would be in commercial use;
 - 1st and 2nd floors would contain 8 self-contained flats (these are existing floors within the building which the appellant states relate to the previous Planning Permission);
 - 3rd and 4th floors would contain 8 self-contained flats (these are proposed floors which have not yet been constructed and which the appellant states relate to the previous Planning Permission);
 - 5th to 7th floors would contain 12-self-contained flats (the subject of this appeal).

Main issues

8. The Council has confirmed that if the appellant had not appealed against non-determination, it would have refused the development for the reasons set out in its statement of case. Set against this context and the evidence in this case, the main issues are:
 - Whether the scheme would prejudice the development and efficient use of a wider mixed-use opportunity site;
 - Whether the proposal makes adequate provision for affordable housing.

² Redbridge Local Plan 2015-2030 March 2018, London Borough of Redbridge.

³ The London Plan, The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016.

Reasons

Appeal site context

9. The appeal site contains a deep-plan 1960s building with modest road frontage which extends 3½ storeys above basement level (Ground and Mezzanine Levels, 1st and 2nd floors). It lies in a prominent position adjacent to the busy Ilford Hill/Cranbrook Road junction, on the periphery of Ilford's primary shopping area. It also sits in extremely close proximity to Ilford train station, which lies to the north and will soon benefit from Crossrail.
10. The area is characterised by modern high-rise residential apartment blocks to the west of the appeal site, with older commercial buildings of a more limited height to the north and east (typically ranging from 2 to 4 stories).
11. The appeal site is identified by the Local Plan as falling within the Ilford Metropolitan Centre, the Ilford Investment and Growth Area, an Archaeological Priority Area, and part of a wider mixed-use opportunity site proposed for housing (98 dwellings) and employment development (650sqm) ('the opportunity site')⁴. The London Plan identifies Ilford as both an Opportunity Area and a Metropolitan Centre serving outer east London, and the Mayor of London has identified Ilford Town Centre as a Housing Zone.
12. A primary frontage lies directly adjacent to the east of the appeal site within the attached Broadway Chambers building, which also forms part of the opportunity site. There are a small number of designated and non-designated heritage assets in close proximity to the appeal site, primarily on the opposite side of Ilford Hill (the collection of Listed buildings forming part of the Hospital of St Mary and St Thomas of Canterbury and the NatWest Bank) and directly to the west (a locally-listed former Public House at No 71 Ilford Hill).

Whether the scheme would prejudice the development and efficient use of a wider mixed-use opportunity site

13. Policies LP1 and LP2 of the Local Plan seek to promote growth in the Borough by directing new development to, amongst others, the Ilford Investment and Growth Area, and that proposals on identified opportunity sites should seek to deliver the indicative quantum of new homes and other non-residential floorspace and corresponding infrastructure. Policy LP2 of the Local Plan and Policies 2.13 and 3.4 of the London Plan also collectively seek, amongst other things, to make an effective and efficient use of land by promoting higher density development in highly accessible locations such as investment and growth areas, and for development within opportunity areas to optimise residential output and densities. Set against this context, I have noted the appellant's reference to the Council's 'Ilford Manifesto' and am satisfied that these development plan policies are consistent with this document's vision and ambitions.
14. The appeal site occupies a modest proportion of the total opportunity site and is tightly hemmed in by the remaining buildings that make up this allocation, and that of a separate opportunity site to the west⁵. As a consequence, any standalone development of the appeal site would, by reason of its scale, height, form, window openings and other amenity requirements, have

⁴ Opportunity Site 18, 73-85 Ilford Hill and 1-7 Cranbrook Road.

⁵ Opportunity Site 8, If Bar, 71 Ilford Hill.

- significant implications for how the remainder of the opportunity site is designed and in my view, there is a high risk that it would prejudice a comprehensive approach to development that is necessary for it to realise its full capacity and the corresponding infrastructure and public realm/connectivity improvements that would otherwise accompany such a scheme. Allowing such standalone schemes on the opportunity site would also potentially give rise to; (a) unnecessary duplication of communal facilities which would result in an inefficient use of space; and/or (b) result in a salami-slicing of development that would result in inadequate facilities and infrastructure provision.
15. My concerns over such a piecemeal approach to development on the opportunity site are reinforced by the limited mix of housing proposed within the building. Whilst I agree with the appellant that Policy LP5 of Local Plan recognises that the Council's preferred mix shown in Table 4 will not always be achievable, it is my view that a comprehensive approach to development across the entire opportunity site would enable a much greater likelihood of this being realised, which would correspondingly be a better fit with local housing need.
16. The Council and appellant have both referred to the housing targets in the Local Plan, the London Plan, and Emerging London Plan in support of their respective positions. Furthermore, the Council states that the objectively assessed need for the Borough is far in excess of capacity and the appellant has not disputed this. In my view, all of these factors demonstrate the need for a substantial level of housing to be delivered on an ongoing basis and the importance of maximising the use of land in an efficient and effective way.
17. I recognise the appellant's concerns over the length of time it may take to assemble sites, particularly in an urban area such as London where there is a highly fragmented patchwork quilt of land ownership. However, there is no substantive evidence before me of the appellant having sought to work in partnership with the other landowners within the opportunity site and neither is there any evidence of marketing the wider opportunity site to encourage a single owner to take the development forward or reasons to justify why other buildings with the allocation are unable or unlikely to be brought forward within a reasonable timeframe. I have also given substantial weight in my consideration on this matter to the Local Plan which was adopted relatively recently, and sets out clear policies on how opportunity sites are to be dealt with. I acknowledge that this may frustrate individual landowners within such opportunity sites, particularly if they wish to move at different speeds or have different objectives, but set against this context it is important to not lose sight of the fact that planning is generally concerned with land-use in the public interest and not the protection of purely private interests⁶.
18. In view of the above, I conclude that the scheme would prejudice a comprehensive approach to the development of the wider opportunity site, which is necessary to realise its full housing output and capacity, and also the quantum of development sought for the Ilford Investment and Growth Area, together with corresponding infrastructure and public realm/connectivity improvements. It would also fail to result in an efficient and effective use of land and would not contribute towards a mixed, inclusive and sustainable community. As a consequence, the proposal would conflict with Policies LP1,

⁶ Planning Practice Guidance: Paragraph: 008 Reference ID: 21b-008-20140306

LP1A, LP2 and LP5 of the Local Plan and Policies 2.13 and 3.4 of the London Plan, which collectively seek, amongst other things, to promote housing growth, deliver opportunity sites in an efficient and effective way with the indicative quantum of development and corresponding community infrastructure, and create mixed, inclusive and sustainable communities.

19. I also find that the scheme conflicts with the objectives of Paragraphs 8, 117, 118 and 122 of the Framework which collectively seek, amongst other things, to: (a) ensure an efficient and effective use of land in meeting the need for homes; (b) promote and support the development of under-utilised land and buildings (in this case the wider opportunity site); (c) take into account the desirability of promoting regeneration and change and the availability of land to accommodate this; and (d) ensure a sufficient range of homes can be provided to meet the needs of present and future generations.
20. I also find that the scheme conflicts with Policy D8 of the emerging London Plan which seeks, amongst other things, to ensure that the public realm is well-designed and its movement function is provided for.

Whether the proposal makes adequate provision for affordable housing

21. Policy LP3 of the Local Plan states that the Council will seek to maximise the provision of affordable housing by setting a minimum strategic affordable target of 35%. Although the appellant has indicated that they would be willing to provide affordable housing subject to a viability assessment, they assert that this should be conditioned and dealt with at the reserved matters stage. A signed and executed planning obligation, whether by agreement with the Council or offered unilaterally, has not therefore been submitted.
22. In the absence of an accurate and executed obligation, the question which arises is whether this matter could be dealt with by condition. However, the Planning Practice Guidance advises that a positively worded condition should not be used to require payment of money or other contributions. It also advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances, such as where there is clear evidence that the delivery of the development would be put at risk, which may apply in the case of more complex and strategically important development⁷. However, I do not consider the scheme before me to be particularly complex or strategically important by itself, and in any event, it would in my view, for the reasons outlined above, put at risk the delivery of the wider opportunity site which I do consider to be strategically important. In view of this, I conclude that this matter cannot be dealt with by condition.
23. Furthermore, given the limited quantum of development proposed and appellant's assertion that it can be speedily delivered, I see no reason why a financial viability assessment should be provided later, such as might be the case for later phases of large strategic developments that are likely to be built over a number of years. In my view, the exact quantum of affordable housing for small and medium sized developments should be established at the outset when it is of fundamental importance to the scheme being considered and likely to figure heavily in the overall planning balance. I recognise that the scheme is in outline form with all matters reserved, but given the clear fixed

⁷ Planning Practice Guidance: Paragraph: 010 Reference ID: 21a-010-20190723

envelope of the proposed extension and level of application detail supplied I am satisfied that reasonable assumptions could still be made about construction costs to inform a viability assessment, together with the provision of up to date information in respect of sale and rental values in the area. Moreover, there is no substantive evidence before me to demonstrate that the level of affordable housing need in the Borough has reduced since the adoption of the Local Plan that would otherwise justify the provision of no affordable housing.

24. In view of the above, I conclude that the development has failed to make provision for 35% affordable housing and neither has a viability assessment been submitted to justify a lower level of provision or evidence submitted to demonstrate that a lower level of affordable housing is needed in the Borough. The proposal would therefore conflict with Policy LP3 of the Local Plan and Policies 3.9 and 3.11 of the London Plan, which collectively seek, amongst other things, to maximise the provision of affordable housing and the promotion of mixed and balanced communities across tenures.
25. I also find that the scheme conflicts with the objectives of Paragraphs 8 and 59 of the Framework which collectively seek, amongst other things, to ensure: (a) that a sufficient range of homes can be provided to meet the needs of present and future generations; and (b) that the needs of groups with specific housing requirements are addressed.

Other matters

26. The Council states that evidence has not been provided to demonstrate that each apartment would receive adequate daylight and sunlight, and that this would be further constrained by future potential development on adjacent sites. However, I am nonetheless satisfied that it would be possible for this consideration to be addressed via the reserved matters and that a reasonable level of daylight and sunlight commensurate with its dense urban location could be provided to the main habitable rooms of apartments even if the adjacent sites were developed.
27. Although the appellant states that the scheme would comply with Policy LP27 of the Local Plan, Policy 7.7 of the London Plan and Policies D6 and H12 of the emerging London Plan and that the provision of more private rented homes accords with the London Mayor's supplementary planning guidance on housing, I am nonetheless satisfied that the harm identified in respect of the main issues and the conflict with adopted development plan policy still justify dismissal of the appeal.
28. The Council has confirmed that a financial contribution is needed to mitigate the impact of the scheme on the Epping Forest Special Area of Conservation. However, given that I am dismissing the development for other reasons, it has not been necessary for me to carry out an appropriate assessment of the scheme and consider the requested financial contribution as it would not alter the outcome of the appeal.
29. The Council and appellant have referred to another proposed scheme at the appeal site for a new 9-storey building comprising 36 residential units and 2 retail units, which was recently refused and is now at appeal⁸. However, this

⁸ Council Ref 5026/18 refused on 3 April 2019.

relates to the construction of a new building and is therefore different to that before me. In any event I must consider the appeal scheme on its own merits.

30. The appellant has stated that they could utilise permitted development rights to convert the building into a large number of micro-residential units which would create a poor environment. However, I have no substantive evidence to indicate that there is a significant probability that this type of development would be constructed should this appeal be dismissed. This limits the weight that I can attach to it as a fallback position.

Planning balance

31. The appellant asserts that because the Council only delivered 38% of its housing requirement over the 3 previous years when assessed against the 2018 Housing Delivery Test results⁹, that it is unlikely to meet the Framework's 2019 transitional target of no more than 45% below the housing required¹⁰. However, the 2019 Housing Delivery Test results have yet to be published and there is no substantive evidence before me to indicate that the Council will not meet this target.
32. Policies LP1, LP1A, LP2, LP3 and LP5 of the Local Plan and Policies 2.13, 3.4, 3.9 and 3.11 of the London Plan are generally compliant with the Framework insofar as they relate to the main issues of this case. I am also satisfied that the proposal conflicts with the development plan when taken as a whole and that the policies referred to are not out of date. In view of this, the presumption in favour of sustainable development as outlined in Paragraph 11 of the Framework is not engaged in this instance.
33. In accordance with Paragraphs 68 and 118 of the Framework, I have given great weight in my assessment to the benefits of using suitable small and medium sized sites within existing settlements for homes, and substantial weight to the value of reusing suitable brownfield land. I also recognise that Paragraph 118 of the Framework states that the development of under-utilised buildings should be promoted and supported, together with opportunities to use the airspace above them. However, I am nonetheless satisfied, for the reasons outlined above, that the scheme would not constitute an effective use of land in accordance with Paragraph 117 of the Framework, and neither do I consider that it would accord with Paragraph 122 which states that planning decisions should support development that makes an efficient use of land.
34. I recognise that the scheme would result in a range of environmental, economic and social benefits, namely; (a) maximising the potential use and capacity of the existing building within existing structural constraints; (b) savings in waste, energy and resources from reusing the existing building; (c) improving the energy efficiency of the existing building; (d) improved maintenance of the existing building from an increased annual income arising from the residential properties, with consequential impact on helping to maintain the viability of the ground and mezzanine level commercial use(s); (e) future occupiers contributing to local shops, services, facilities, the evening economy and the long-term future of Ilford town centre; (f) improvements to the visual appearance of the existing building at a key junction in Ilford Town

⁹ <https://www.gov.uk/government/publications/housing-delivery-test-2018-measurement>

¹⁰ Footnote 7, Paragraph 11(d) and Annex 1 of the National Planning Policy Framework, Ministry for Housing, Communities and Local Government, February 2019.

Centre; (g) the use of an existing brownfield site; (h) the speedy delivery of 12 additional dwellings in a sustainable location towards the Council's housing land supply; (i) the provision of 12 dwellings available for private-rent which would help diversify Ilford's housing offer to meet the needs of people with specific housing requirements; (j) the retention of an active frontage at ground and mezzanine levels providing a commercial use; and (k) local employment during construction. However, it is my view that when considered collectively, these environmental, economic and social benefits would be of limited value given the quantum of development proposed, and when taken cumulatively would not outweigh the economic and social harm that would arise from prejudicing a comprehensive approach to development of an opportunity site identified in the Local Plan and the lack of any affordable housing provision.

Conclusion

35. All representations have been taken into account, but no matters, including the benefits of the development and the scope of possible planning conditions, have been found to outweigh the identified harm and policy conflict. For the reasons above, the appeal should be dismissed.

Robert Fallon

INSPECTOR